



A BILL FOR AN ORDINANCE

RELATING TO MAINTENANCE OF AUWAI IRRIGATION SYSTEMS.

BE IT ORDAINED BY the People of the City and County of Honolulu:

SECTION 1. Findings and purpose. The council finds that auwai irrigation ditches were built centuries ago to provide fresh water to taro fields. Over the years, however, changes in land use patterns, land ownership and government policies, have led to a decline in regular maintenance of the auwai systems, resulting in debris accumulation, compromised water quality, improper diversion of water, and neglect of valuable cultural resources.

HRS Section 46-1.5(13) authorizes the City and County of Honolulu to enact ordinances deemed necessary to protect health, life, and property, and to preserve the order and security of the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute where the statute does not disclose an express or implied intent that the statute shall be exclusive or uniform throughout the State.

HRS Section 46-11.5 requires channels and drainage-ways to be maintained by the respective owners and permits the counties to enforce this responsibility in order to prevent the creation of unsanitary conditions or a public nuisance.

The purpose of this ordinance is to provide for the maintenance of traditional auwai irrigation ditches.

SECTION 2. Chapter 41, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new article to be appropriately designated by the Revisor of Ordinances and to read as follows:

"Article _____. Relating to the Maintenance of Auwai Irrigation Systems

Sec. 41-____.1 Definitions.

As used in this article unless the context otherwise requires:

"Auwai" means an irrigation waterway or canal using fresh water diverted from a stream, spring, or other water source, and traditionally used to provide fresh water to taro fields.

"City" means the City and County of Honolulu.



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"Director" means the director and chief engineer of the department of facility maintenance or the director's authorized representative.

"Department" means the department of facility maintenance.

"Owner" means any fee owner or lessee of the land on which the auwai or relevant portion of the auwai is situated.

Sec. 41-____.2 Maintenance of auwai irrigation systems.

The owner of any auwai has the duty to maintain, dredge and clear such auwai so that the flow of the water runs unimpaired. The owner is also responsible for the removal of any debris, vegetation, silt, or other items or material of any kind, that may interfere with the natural flow of water through the auwai. Structural maintenance of an auwai, including repair of leaks, is the responsibility of the owner.

Sec. 41-____.3 Right of entry and inspection.

The director or any authorized employee of the department may, during reasonable hours and upon notification to the person or entity with a right of possession or control over any auwai, enter any premises or real property in the discharge of official duties to inspect, investigate and to ensure such auwai is maintained as required in this article. During the maintenance and clearing of any auwai and the removal of any debris, vegetation, silt, or other material, the department shall have access thereto for inspection purposes during reasonable hours.

Sec. 41-____.4 Notice of violation and order.

- (a) The director may notify the owner of any auwai to maintain and clear the auwai, and to remove any debris, vegetation, silt or other items or material of any nature, as is necessary for the proper maintenance of such auwai.
- (b) The notice shall include at least the following information:
 - (1) Date of the notice;
 - (2) The name and address of the person noticed;
 - (3) A statement that the owner is in violation of Section 41-____.2;
 - (4) The nature of the violation; and
 - (5) The location and date of the violation.
- (c) The notice shall describe the work to be done to correct the violation.



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- (d) The notice shall inform the person that failure, neglect or refusal to correct the violation or to complete the work described in the notice of violation and order within 30 calendar days of the date of the notice will result in a civil fine not to exceed \$500 for each day the violation persists, to be assessed by the city commencing 31 calendar days after receipt of the notice of violation and order.
- (e) The order may require the owner to do any or all of the following:
 - (1) Cease and desist from the violation;
 - (2) Correct the violation at the owner's own expense before a date specified in the order;
 - (3) Pay a civil fine not to exceed \$500.00 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.
- (f) The order shall advise the person of the finality of the order 30 days after the date of its mailing or delivery unless written request for a hearing is mailed or delivered to the chief engineer within said 30 days.

Sec. 41-____.5 Request for extension of time.

- (a) Any person served with a notice of violation and order may request the director in writing for an extension of time to complete the maintenance and clearing of any auwai.
- (b) The written request for an extension of time shall be delivered or mailed and postmark dated to the director within 15 calendar days of the delivery of the notice of violation and order.
- (c) An extension of the 30-day time limit stated in the order may be granted in writing by the director only for good cause and shall be only for a reasonable period of time necessary to complete the work required, as determined by the director.
- (d) A person aggrieved by a decision of the director under this section shall have a right to a hearing as provided for in Section 41-____, provided the person submits a written request for a hearing to the director within 10 calendar days after delivery of the director's decision.



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Sec. 41-____.6 Violation-Penalty.

Any person who violates any provision of this article shall be punished by a fine not exceeding \$500 per day for each day in which the violation persists.

Sec. 41-____.7 Effect of order—right to hearing.

- (a) The provisions of the order issued by the director under Section 41-____.4 shall become final 31 days after the date of the mailing or delivery of the order unless within 30 days of mailing or delivery the person subject to the order requests in writing a hearing before the director. The request for hearing shall be considered timely if the written request is delivered or mailed and postmark dated to the director within said 30 days.
- (b) Upon receipt of the written request for hearing, the director shall specify a time and place for the person subject to the order to appear and be heard. The hearing shall be conducted by the director in accordance with the provisions of HRS Chapter 91. Following said hearing, the chief engineer may affirm, modify or rescind the order as in the opinion of the director may be appropriate.

Sec. 41-____.8 Judicial enforcement of order.

The director may institute a civil action in any court of competent jurisdiction for enforcement of any orders issued pursuant to Sections 41-____.4, 41-____.5, and 41-____.7. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director need only show that the notice of violation and order was served, a hearing was held or the time granted for requesting a hearing had expired without such request, the civil fine imposed and that the fine imposed has not been paid.

Sec. 41-____.9 Applications.

The provisions of this article shall be in addition to and shall not limit any other applicable provisions of federal, state or city law, ordinance, or rule. The provisions of this article shall not create a duty on the part of the city regarding auwai other than is already established by law.



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Sec. 41-____.10 Appeal in accordance with statute.

If any person is aggrieved by the order issued by the director pursuant to Sections 41-____.4, 41-____.5, and 41-____.7, the person may appeal the order in the manner provided in HRS Chapter 91; provided, that no provision of such order shall be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

Sec. 41-____.11 Severability.

The provisions of this article are declared to be severable. If any portion of this article or the application thereof to any person or circumstances is held invalid for any reason, the validity of any other portion of this article which may be given effect without the invalid portion shall not be affected and if the application of any portion of this article to any person, property or circumstance is held invalid, the application of this article to any other person, property or circumstance shall not be affected."



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SECTION 3. This ordinance shall take effect upon its approval.

INTRODUCED BY:

Chad Fukushima

DATE OF INTRODUCTION:

JAN 13 2014

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

KIRK CALDWELL, Mayor
City and County of Honolulu

FILED
JAN 13 2016
PURSUANT TO ROH Sec. 1-2.4